

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed November 12, 2008. Claims 1-23 were pending and rejected in view of cited art.¹ Claims 1 and 17 are amended. Claims 1-23 are now pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. EXAMINER'S INTERVIEW

Applicant's express their appreciation to the Examiner for conducting an interview with Applicant's representative on April 13, 2009. The substance of the interview is included in this response.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. §102(E)

The Office Action rejected claims 1, 2, 4, 6, 7, 10, 11, and 15-17 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2005/0283188 (*Loshakove*). Because *Loshakove* does not disclose, teach, or suggest each and every element of the rejected claims, Applicant respectfully traverses this rejection in view of the following remarks.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments and/or new claim(s) can be found throughout the specification and/or drawings as originally filed.

The Office Action asserts that *Loshakove*:

. . . discloses at least one first primary tine (for example, two adjacent 1104's on the left side) extending from a first [i.e. inside] curved region of a looped element offset from the axis of symmetry of the looped elements (for example, see Figure 16B; one to the right and left of the axis of symmetry of the looped element) and at least one second primary tine (for example, two adjacent 1104's on the right side positioned on a looped element directly opposite the looped element on which the first primary tines are positioned) extending from a first curved region of a looped element offset from the axis of symmetry of the looped elements (for example, see Figure 16B; one to the right and left of the axis of symmetry of the looped element) towards the at least one first primary tine

(Office Action, page 3). However, claims 1 and 17 have been amended to recite, in part, "at least one first primary tine extending from a first curved region of a looped element" and "at least one second primary tine extending from another first curved region" where "said first and second primary tines being offset from and substantially parallel to an axis of symmetry of the looped element from which they extend" and "said first and second primary tines being substantially parallel to each other."

The Office Action is citing the "inner" portions of *Loshakove*'s "undulating ring 1102" as first curved regions and "spikes 1104" as first and second primary tines. However, no two spikes 1104, which "extend from a first curved region" and "from another first curved region," are "substantially parallel to each other" and are "offset from and substantially parallel to an axis of symmetry of the looped element from which they extend," as recited, in part, by claims 1 and 17. Rather, Figure 16B shows a generally star shaped device 1100 that has spikes 1104 "which extend from an undulating ring 1102 [and] do not extend from extreme points of the circumference of the ring 1102," (paragraph [0219]). Furthermore, Applicant respectfully submits that the Office Action has not cited, nor has Applicant found, any other portions of *Loshakove* that disclose, teach, or suggest these elements.

Thus, *Loshakove* does not disclose, teach, or suggest each and every limitation of claims 1 and 17. Therefore, Applicant respectfully requests that the rejection of claims 1 and 17 under 35 U.S.C. § 102(e) be withdrawn. Claims 2, 4, 6, 7, 10, 11, and 15-16 depend from claim 1 and thus include the same elements. For at least the same reasons discussed above, Applicant respectfully requests that the rejection of claims 2-16 and 18-23 also be reconsidered and withdrawn.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 5, 12-14, and 18-23 under 35 U.S.C. § 103(a) as being unpatentable over *Loshakove*. Claims 3, 8, and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Loshakove* in view of U.S. Patent No. 6,488,692 (*Spence*). Because the cited references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims, Applicant traverses the Examiner's rejection for obviousness.

As shown above, *Loshakove* fails to disclose, teach, or suggest "said first and second primary tines being substantially parallel to each other," as recited, in part, by claims 1 and 17. Applicant respectfully submits that the Office Action has not cited, nor has Applicant found, any portion of *Spence* that discloses, teaches, or suggests this element.

In view of the above, Applicant respectfully submits that *Loshakove* and *Spence*, whether alone or in combination, do not teach or suggest the invention claimed in independent claims 1 and 17. For at least the same reasons, Applicant also respectfully submits that *Loshakove* and *Spence*, whether alone or in combination, do not teach or suggest the inventions claimed in dependent claims 3, 5, 8, 9, 12-14, and 18-23. As such, Applicant respectfully requests withdrawal of the rejection of claims 3, 5, 8, 9, 12-14, and 18-23 under Section 103.

D. OBVIOUSNESS TYPE DOUBLE PATENTING REJECTION

In the Office Action, the Examiner rejects claims 1-23 under the judicially created doctrine of obviousness-type double patenting and being unpatentable over claims 1-11 of U.S. Patent No. 7,211,101. Applicant submits herewith a terminal disclaimer relative to U.S. Patent No. 7,211,101 in order to overcome this rejection. Withdrawal of this rejection and allowance of the pending claims is respectfully requested in view of the terminal disclaimer.

E. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the

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future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 7th day of May, 2009.

Respectfully submitted,

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